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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN VILLATORO,

Defendant and Appellant.

G053430

(Super. Ct. No. 15CF1115)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
David A. Hoffer, Judge. Affirmed.

Jonathan Villatoro, in pro. per.; and Marianne Harguindeguy, under
appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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We appointed counsel to represent defendant Jonathan Villatoro on appeal. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), setting forth the facts of the case, raising no issues, and requesting that we independently review the entire record. We provided defendant 30 days to file written argument on his own behalf; he did so.

We have examined the entire record, appointed appellate counsel's *Wende/Anders* brief, and defendant's supplemental brief; we find no reasonably arguable issue. (*Wende, supra*, 25 Cal.3d 436.) We therefore affirm.

BACKGROUND

Defendant was charged in an amended information with nine counts, all of which occurred on May 21, 2015: (1) attempted first degree murder of Edward M. (Pen. Code, §§ 664, subd. (a), 187, subd. (a)); (2) aggravated assault with a deadly weapon on Edward M. (*id.*, § 245, subd. (a)(1)); (3) attempted unlawful taking of a vehicle (*id.*, § 664, subd. (a); Veh. Code, § 10851, subd. (a)); (4) assault with a deadly weapon on Jessica L. (Pen. Code, § 245, subd. (a)(1)); (5) second degree commercial burglary (*id.*, §§ 459, 460, subd. (b)); (6) first degree residential burglary (*id.*, §§ 459, 460, subd. (a)); (7) second degree burglary of Kara B.'s vehicle (*id.*, §§ 459, 460, subd. (b)); (8) unlawful taking of a vehicle with a prior conviction for the same offense (Veh. Code, § 10851, subd. (a); Pen. Code, § 666.5, subd. (a)); and (9) second degree burglary of Erick and Daniel E.'s vehicle (Pen. Code, §§ 459, 460, subd. (b)). The information alleged, as to counts 1, 2, and 4, that defendant personally inflicted great bodily injury. (*Id.*, § 12022.7, subd. (a).) The information further alleged that defendant had served three prior prison terms. (*Id.*, § 667.5, subd. (b).)

In January 2016, before trial began, defendant pleaded guilty to all the counts of the amended information, admitted the truth of the allegations, and provided a written factual basis for his plea. The guilty plea agreement provided that the maximum penalty for the offenses and sentencing enhancement allegations was 20 years eight months to life in prison.

One month later, the trial court conducted a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*), in which defendant argued that his trial counsel had ignored his request to file a Penal Code section 995 motion after the preliminary hearing, and had refused to file a motion to withdraw defendant's guilty plea. At the hearing, defendant's trial counsel argued that there were not adequate legal grounds for either of those motions. The trial court denied the *Marsden* motion.

In March 2016, defendant was sentenced to a total of 15 years eight months, as specified in his plea agreement. Defendant was given credit for a total of 356 custody days.

Defendant filed a timely notice of appeal challenging both his sentence and the validity of his plea. Defendant also filed a request for a certificate of probable cause on the ground "he was 'coerced' into taking the plea and that he is innocent of some of the charges," which was denied.

ANALYSIS OF POTENTIAL ISSUES

The first issue we must consider is whether the denial of defendant's *Marsden* motion is reviewable on appeal. When a defendant files a notice of appeal following entry of a guilty plea, our jurisdiction is limited. We may consider the propriety of the defendant's sentence or other matters occurring after the plea that do not affect its validity, or the correctness of the denial of a motion to suppress evidence. A challenge based on the validity of the plea or admission, or any other grounds for appeal, requires that the trial court grant a request for a certificate of probable cause. (Cal. Rules

of Court, rule 8.304(b); *People v. Mendez* (1999) 19 Cal.4th 1084, 1104.) In this case, defendant's request for a certificate of probable cause was denied by the trial court.

A *Marsden* motion may be challenged without a certificate of probable cause only when it impacts the legality of the proceedings resulting in the plea, particularly the voluntariness of the agreement. (*People v. Lobaugh* (1987) 188 Cal.App.3d 780, 786.) The grounds raised by defendant at the hearing on his *Marsden* motion were that his trial counsel had failed to file a Penal Code section 995 motion after the preliminary hearing, and had refused to file a motion to withdraw defendant's guilty plea. Without determining whether those issues implicate the voluntariness of defendant's plea, in the interests of justice, we proceed to consideration of the propriety of the trial court's order denying the *Marsden* motion.

The trial court did not abuse its discretion in denying defendant's *Marsden* motion. "When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance. [Citation.] A defendant is entitled to relief if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result [citations]." (*People v. Crandell* (1988) 46 Cal.3d 833, 854, overruled on other grounds in *People v. Crayton* (2002) 28 Cal.4th 346, 364-365; see *People v. Streeter* (2012) 54 Cal.4th 205, 230; *People v. Bills* (1995) 38 Cal.App.4th 953, 961; *People v. Smith* (1993) 6 Cal.4th 684, 696.) Defendant was provided a full and fair opportunity to explain why he believed new counsel should be appointed. The trial court properly determined that the actions defendant complained his counsel did not perform were not legally supportable, and therefore did not abuse its discretion in denying the *Marsden* motion.

In his supplemental brief, defendant argues that the attempted murder charge should have been reduced or dismissed. Defendant was charged with attempting to murder Edward M. by running him over with a stolen van. Defendant contends he did not commit attempted murder because he only sideswiped Edward M. with his side rearview mirror; Edward M. did not suffer any life-threatening injuries; and Edward M. was in the street, rather than on the sidewalk, when the incident occurred. The elements of attempted murder are that the defendant took at least one direct but ineffective step toward killing another person, and the defendant intended to kill that person. (CALCRIM No. 600.) The factual basis for defendant's guilty plea includes the following: "I willfully and unlawfully and with the specific intent to kill attempted to murder another by assaulting him with a motor vehicle." Nothing in the record supports dismissal or reduction of the attempted murder charge.

Defendant also argues in his supplemental brief that the sentence imposed was too harsh. But the sentence imposed was exactly what he had agreed to in the plea agreement. Nothing about the sentence as imposed was improper. Defendant's presentence custody credits were properly calculated, and the fines, assessments, DNA testing requirement, and driver's license revocation imposed on defendant were all appropriate. We find no error in the sentence.

Our review of the record pursuant to *Wende, supra*, 25 Cal.3d 436, and *Anders, supra*, 386 U.S. 738, including the possible issues suggested by defendant, has disclosed no reasonably arguable appellate issue. Competent counsel has represented defendant in this appeal.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.